



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 17, 1995

Mr. Riley J. Simpson
City Attorney
City of Copperas Cove
P.O. Drawer 1449
Copperas Cove, Texas 76522

OR95-130

Dear Mr. Simpson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31224.

The City of Copperas Cove (the "city") received two open records requests for a certain document written by the city manager. You contend that the city may withhold the requested document pursuant to the Open Records Act, section 552.103(a) of the Government Code. The first request was dated December 19, 1994, and the second request was dated January 6, 1995. The city responded to the December 19, 1994, request by sending the requestor a copy of a letter from the city attorney to the city secretary in which the city attorney states that the city will not release the requested information based on section 552.103 of the Government Code. You requested a decision from this office on January 9, 1995.

Generally, the Open Records Act does not permit a governmental body to withhold requested information without first obtaining an open records decision from this office. Section 552.301(a) of the Government Code provides that:

A governmental body that receives a written request for information that it considers to be within one of the exceptions under [chapter 552] must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the

information falls within one of the exceptions. *The governmental body must ask for the attorney general's decision within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.* [Emphasis added.]

Since the city received the first request on December 19, 1994, and requested a decision from this office on January 9, 1995, the city failed to seek our decision within the ten-day period mandated by section 552.301(a). Because the city did not request an attorney general decision within the deadline provided by section 552.301(a), the requested information is presumed to be public information. Gov't Code § 552.302; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The city has not raised any specific compelling reasons to overcome the presumption that the information is public. The city asserts that section 552.103 of the Government Code is applicable.

Generally, the presumption of openness may be overcome if the governmental body shows that either section 552.101 or an exception that protects the interest of a third party applies to the requested information. *See* Open Records Decision No. 630 (1994) at 3. Section 552.103 of the Government Code protects the litigation interests of a governmental body.¹ *See* Open Records Decision No. 551 (1990). Thus, section 552.103 does not protect the interests of a third party and is waived if a governmental body fails to raise it within the ten-day deadline. *See* Open Records Decision No. 591 (1991) at 2 n.2. We, therefore, conclude that the city has waived section 552.103 by failing to ask for an open records decision within the ten-day time period of section 552.301(a) of the Government Code; the city must release the requested information.²

¹Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991).

²Even if the city had raised section 552.103 within the ten-day deadline, section 552.103 would not be applicable. You have provided no information that would show that the information relates to a pending or reasonably anticipated judicial or quasi-judicial proceeding. In fact, you state that "[t]he

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 31224

Enclosures: Submitted documents

cc: Mr. Frank A. DiMuccio, Jr.
2314 East Highway 190
Copperas Cove, Texas 76522
(w/o enclosures)

(Footnote continued)

information provided in the [requested] confidential memorandum was used to negotiate a settlement of an administrative action in lieu of a law suit." This statement indicates that any contested matter to which the requested information would relate has been settled.